

REMARKS

I. Status of the Application

Claims 1-30 were filed in the original application. In response to a Restriction Requirement mailed March 27, 2002, claims 1-30 were cancelled and claims 31-60 were added.

Claims 31-41 were allowed in the Office Action mailed May 5, 2004.

In the Office Action of November 3, 2004, the Examiner rejected Claims 45-56 and 58-60, and reinstated rejection of Claims 31-43.

Claims 31-43, 45-56, and 58-60 have been cancelled. Claims 61-87 have been added. Claims 61-71, 72-77, 78-81, 82, and 83-87 correspond to amended forms of cancelled Claims 31-41, 42-48, 50-53, 54, and 55-60, respectfully. Thus, Claims 61-87 are pending in the application.

II. The Claims Are Definite and Supported by an Adequate Written Description

Claims 61-87 have been added in the present amendment. Claims 31-41 were allowed in the Office Action mailed May 5, 2004. Applicants, in response to the Office Action mailed May 5, 2004, inadvertently omitted limiting language added to Claims 31-41 that made Claims 31-41 fit for allowance.¹ New Claims 61-71 have been added that mirror formerly allowed Claims 31-41 (i.e., Claims 61-71 possess the limiting language added back to cancelled Claims 31-41).

In addition, Claims 72-77, 78-81 and 83-87 (corresponding to cancelled Claims 42-48, 50-53, and 55-50, respectively) have been added that also include this limiting language. Thus, for the same reasons stated in the response to the Office Action mailed September 29, 2003, and found by the Examiner to credibly support allowance of Claims 31-41, Claims 61-87 are definite and supported by an adequate written description.

¹ Specifically, in response to the Office Action mailed September 29, 2003, Claims 31-41 were amended to recite "an isolated and uncomplexed protein, protein fragment, or polypeptide selected from the group consisting of a Hsp70 protein of SEQ ID NO.: 1, a C-terminal fragment of Hsp70, wherein said fragment comprises amino acids 384-641 of SEQ ID NO.: 1, and a polypeptide having 70% or greater homology to amino acids 384-641 of SEQ ID NO.: 1, wherein said isolated protein, fragment, or polypeptide induce an immune response by NK cells, and further said response increases cytolytic activity of the NK cells or stimulates proliferation of the NK cells." Having been amended, the Examiner subsequently allowed Claims 31-41 in the Office Action mailed May 5, 2004.

III. The Claims Are Not Anticipated

The Examiner rejected Claims 50-53 under 35 U.S.C. §102(b) as allegedly being anticipated by Jindal et al. Although Claims 50-53 have been cancelled, new Claims 78-81 have been added that are amended forms of cancelled claims 50-53. Thus, in an effort to expedite prosecution of the application, the Examiner's rejection of cancelled Claims 50-53 is addressed in the context of newly added Claims 78-81.

In particular, the Examiner states that "The Hsp70 protein of Jindal et al. is identical to the instant Hsp70 protein." The Applicants respectfully disagree and submit that Jindal et al. does not teach all of the elements of the claims.

In particular, Jindal et al. does not teach the claim element of a pharmaceutical composition. On page 2, the specification defines pharmaceutical preparations as "substances and preparations of substances which, when used on or in the human body, are meant for healing alleviating, preventing or recognizing diseases, ailments, physical defects or pathological discomforts."

Jindal et al. does not teach or suggest the claim element of a pharmaceutically acceptable carrier or excipient. Indeed, Jindal et al. does not teach or suggest the use of Hsp70 as a therapeutic agent. Thus, the Applicants submit that Jindal et al. does not teach all elements of Claims 78-81. As such, Claims 78-81 cannot be anticipated by Jindal et al.

CONCLUSION

Having submitted new Claims 61-87 that address and ameliorate concerns forming the bases for rejections in the Office Action mailed September 29, 2004, and the subsequent renewal of these rejections in the Office Action mailed November 3, 2004 (due to the omission of limiting language in Claims 31-41), reconsideration of the application is respectfully requested. It is respectfully submitted that the invention as claimed fully meets all requirements and that the claims are worthy of allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

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